

**U.S. Department of the Interior  
Bureau of Land Management**

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**Environmental Assessment**

**DOI-BLM-NV-S010-2011-0057-EA**

**N-75198/K/**

**RIGHT-OF-WAY FOR ROAD AND DRAINAGE  
WITH RELATED APPURTENANCES**

**APPLICANT**

**Clark County Department of Public Works, Las Vegas, Nevada**

**LOCATION**

**Southwest Las Vegas Area, West Oleta Avenue and El Camino Road**

**PREPARING OFFICE**

**U.S. Department of the Interior  
Bureau of Land Management  
Las Vegas Field Office  
4701 N Torrey Pines  
Las Vegas, Nevada 89130  
702-515-5000**



# **Environmental Assessment — Right-of-Way for Road and Drainage, with Related Appurtenances**

## **Identifying Information:**

DOI-BLM-NV-S010-2011-0057-EA

## **Title, EA Number, and Type of project:**

Title: Right-of-Way Amendment to Add Road and Drainage with Related Appurtenances.

EA Number: DOI-BLM-NV-S010-2011-0057-EA

Type: Right-of-Way Amendment N-75198 /K/

## **Location of Proposed Action:**

Located in Southwest Las Vegas Valley, South of Blue Diamond Road, Highway 160, on W. Oleta Avenue and El Camino Road.

## **LEGAL DESCRIPTION:**

Mount Diablo Meridian, Nevada, T. 22 S., R. 60 E., Section 23, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE, S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .

## **Name and Location of Preparing Office:**

Department of the Interior  
Bureau of Land Management (BLM)  
Las Vegas Field Office  
4701 N. Torrey Pines  
Las Vegas, NV 89130

Office Number: LLNVS00560

## **Identify the subject function code, lease, serial, or case file number:**

Case File Number: N-75198 /K/, Amendment

## **Applicant Name:**

Clark County Department of Public Works, Las Vegas, Nevada.

## **Purpose and Need for Action:**

Description: Clark County Department of Public Works has applied for a right-of-way for road and drainage on public lands. The right-of-way will provide paved road and drainage along Oleta Avenue and El Camino Road located in Southwest Las Vegas, south of Blue Diamond Road, Highway 160. Private businesses exist at the end of W. Serene Avenue. The right-of-way is necessary to allow access to the local businesses and planned improvements within the Las Vegas valley. The Union Pacific Railroad Company needs access to their tracks. The roadway will end with a turn-about before the railroad tracks and will allow access to the tracks for the Union Pacific Railroad Company.

### **Scoping, Public Involvement and Issues:**

The proposed area is located in-valley, in a residential area, south of Blue Diamond Road, Highway 160. The proposal is to add additional road and drainage to W. Oleta Avenue, and El Camino Road. The road is necessary to allow access to local businesses and future planned improvements within the Las Vegas valley.

The Union Pacific Railroad Company has asked for access to their tracks. The roadway will end with a turn-about before the railroad tracks and will allow access to the tracks for the Union Pacific Railroad Company.

The roads will be located within the Southern Nevada Public Land Management Act reservation area for Affordable Housing, N-77376. The roadway will be located south and east of the planned Affordable Housing unit and will not conflict with the Affordable Housing.

This is a Las Vegas in-valley action. All cumulative impacts associated with this action were analyzed on pages 4–58 through 4–66 of the Las Vegas Valley Disposal Boundary Environmental Impact Statement signed March 2005.

Stipulations will be attached to the right-of-way grant which will include conservation and protection of the natural resources, cultural resources, Threatened and Endangered (T&E) Species, and the environment.

This proposal has been reviewed by BLM resource team members. Their comments and evaluations are included in this environmental assessment.

A summary of this EA is available for review by the public on the internet on the BLM.GOV website under NEPA number: DOI-BLM-NV-S010-2011-0057-EA.

## **Proposed Action and Alternatives**

### **Description of the Proposed Action — Alternative Number 1:**

Description: Clark County Department of Public Works has applied for a right-of-way for road and drainage on public lands. The right-of-way will provide paved road and drainage along Oleta Avenue and El Camino Road located in Southwest Las Vegas, south of Blue Diamond Road, Highway 160. Right-of-way area for the road and drainage will range from 30 to 100 feet width, with length approximately 2530 feet, approximately 2.67 acres. The right-of-way is necessary to allow access to local businesses and planned improvements within the Las Vegas valley. The Union Pacific Railroad Company has asked for access to their tracks. The roadway will end with a turn-about before the railroad tracks and will allow access to the tracks for the Union Pacific Railroad Company.

Construction will begin as soon as the right-of-way is granted and will take approximately four months to complete. The roadway will be paved in conformance with Clark County standards. Related facilities within the right-of-way will include: curb, gutter, sidewalk, signage, pipes, culverts, riprap, and inlet structures as necessary. The use of heavy machinery will be needed for construction of the roadway and will include grading and excavation equipment.

About 30% of the area is already disturbed. The new roadway will connect to the existing right-of-way grant N-75198 for W. Serene Avenue and right-of-way N-61459 for S. Torrey Pines Drive.

If mineral material is generated, and is not needed for the development of the proposed action within the right-of-way area, removal of the excess mineral material will require a specific BLM use authorization to remove the mineral material by a third party for the right-of-way holder in accordance with regulations at 43 CFR 3600.

The right-of-way will be granted to Clark County for perpetuity.

### **Description of Other Alternatives Analyzed in Detail:**

#### **NO ACTION ALTERNATIVE NUMBER 2:**

Under a “no action” alternative, BLM land would not be made available for issuance of the right-of-way. No action would result in no access, ingress, or egress to the local businesses and planned communities within the valley. The Union Pacific Railroad would not have adequate access to their railroad tracks.

### **Alternatives Considered but not Analyzed in Detail:**

#### **ALTERNATE NUMBER 3:**

No other alternatives were considered.

### **Conformance**

The proposed action is in conformance with the Las Vegas Resource Management Plan (RMP) decisions RW-1, and RW-1-h, approved October 5, 1998.

- RW-1 — “Meet public demand and reduce impacts to sensitive resources by providing an orderly system of development for transportation, including legal access to private inholdings, communications, flood control, major utility transmission lines, and related facilities.”

- RW-1-h— “All public land within the planning area, except as stated in RW-1-c through RW-1-g, are available at the discretion of the agency for rights-of-way under the authority of the Federal Land Policy Management Act.”

Rights-of-ways are allowable on BLM-administered lands per Title V of the Federal Land Policy and Management Act of 1976, BLM Handbook 2800, and government regulations 43 CFR 2800, at the discretion of the Secretary of the Interior or his/her delegated officer.

## Affected Environment:

### SUPPLEMENTAL AUTHORITIES

Supplemental Authority	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Air Quality		X		Soil disturbing activity requires a dust control permit. Ensure a permit is obtained through DAQEM and stipulations are in compliance for the duration of the activity.
Area of Critical Environmental Concern (ACEC)	X			The proposed project area is not within an ACEC or any critical desert tortoise habitat.
Cultural/Historical	X			To comply with Section 106 of the National Historic Preservation Act, the BLM Archaeologist conducted an existing data review of the area of potential effect (APE) according to 36 CFR 800.4. The APE was previously evaluated in support of the Valley Disposal Boundary Environmental Impact Statement (EIS).. Results are detailed in BLM Cultural Resource Report 5-2467. There are no historic properties within the APE; no further evaluation is required unless the scope of the undertaking changes.
Paleontological Resources	X			No fossil-bearing deposits are present that would be adversely affected by the undertaking.
Environmental Justice		X		No minority or low income group would be disproportionately impacted by health or environmental effects.
Farmlands Prime or Unique	X			There are no prime or unique farmland designations in the District.
Noxious Weeds/Invasive Non-native Species		X		Mitigation measures sufficient to mitigate weed risks.

Supplemental Authority	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Native American Religious Concerns	X			No Native American concerns were identified for this portion of the Las Vegas Valley based upon an ethnographic assessment that was conducted in support of the Valley Disposal Boundary EIS by the Chambers Group. The project area is already disturbed.
Floodplains	X			There are no floodplains present in the project area.
Riparian/Wetlands	X			There are no wetlands/riparian zones present in the project area.
Threatened, Endangered or Candidate Plant Species	X			Not present.
Threatened, Endangered or Candidate Animal Species.			X	See EA language below and attached Terms and Conditions in project folder. This notice will serve as the Section 7 Determination and no additional paperwork will be provided (Sec 7 Log # NV-052-11-060).
Migratory Birds			X	Addressed in EA below.
Waste - Hazardous/Solid		X		No issues. Include standard stipulations for Hazardous Waste.
Water Quality		X		The area is already highly disturbed and the project will not cause any new significant impacts as long as best management practices are followed.
Wild & Scenic Rivers	X			Not present.
Wilderness (Study Area)	X			The proposed action is not located within or adjacent to designated Wilderness, WSAs or ISAs.

Supplemental Authority	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Forests and Rangelands (HFRA only)		X		Cactus and yucca are considered government property and are regulated under the Nevada BLM forestry program. The proposed action is in an area known to contain low densities of cactus and yucca. Low densities of cactus and yucca are likely present in the proposed project area. Impacts to cactus and yucca resources resulting from the proposed action would be considered negligible. Salvage, disposal through a sale, or other impact minimization measure are not necessary. All cactus and yucca that might be impacted by this action must be disposed of in an off-site trash receptacle.
Human Health and Safety		X		No issues. Follow best management practices and follow safety regulations as included in the stipulations attached to the grant.

Other resources of the human environment that have been considered for this environmental assessment (EA) are listed in the table below. Elements that may be affected are further described in the EA. Rationale for those elements that would not be affected by the proposed action and alternative is listed in the table below.

Other Resources	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Grazing Management	X			The proposed project is not located in an authorized grazing allotment.
Green House Gas Emissions (Climate Change)		X		Currently there are no emission limits for suspected Greenhouse Gas (GHG) emissions, and no technically defensible methodology for predicting potential climate changes from GHG emissions. However, there are, and will continue to be, several efforts to address GHG emissions from federal activities, including BLM authorized uses.



Other Resources	Not Present	Present/Not Affected	Present/May be Affected	Rationale
Minerals	X			No issues. No mining claims or mining operations present. Mineral materials will not be severed from the property by this action.
Paleontological Resources	X			No fossil-bearing deposits are present that would be adversely affected by the undertaking.
Socio-Economic Values		X		This project will not disproportionately impact social or economic values.
Soils/Hydrology		X		The area is already highly disturbed and the project will not cause any new significant impacts as long as best management practices are followed.
Vegetation		X		The proposed project is adjacent to known occurrences yellow two toned penstemon (penstemon bicolor spp bicolor). If yellow two toned penstemon is present, based on the known range and distribution of this species, the proposed level of impact of 1.73 acres is not expected to be significant or lead to a trend toward listing of this species.
Visual Resources		X		The proposed action occurs in VRM Class IV, which allows for major modification to the existing landscape. Due to the amount of existing development in the surrounding area, the proposed action is not expected to dominate the view of the casual observer.
Recreation	X			Not present
Fuels/Fire Management		X		Normal conformance with seasonal fire restrictions are adequate. Restrictions can go into affect anytime between May 15 to Oct. 1.
Wildlife		X		Addressed in EA below.

## **Wildlife:**

The proposed project area supports and is adjacent to lands that support wildlife characteristic of the Mojave Desert. Biological diversity varies according to topography, plant community, and proximity to water, soil type, and season.

Several common species of reptiles that may be present in the vicinity of the proposed project site may include the western whip-tail (*Cnemidophorous tigris*), desert iguana (*Dipsosaurus dorsalis*), side-blotched lizard (*Uta stansburniana*), zebra-tail lizard (*Callisaurus draconoides*), desert tortoise (*Gopherus agassizii*), western shovel-nosed snake (*Chionactis occipitalis*) and garter snake (*Thamnophis sp.*).

Common bird species that may be present in the vicinity of the proposed project site may include the rock wren (*Salpinctes obsoletus*), black-throated sparrow (*Amphispiza quinquestriata*), turkey vulture (*Cathartes aura*), common raven (*Corvus corax*), phainopepla (*Phainopepla nitens*), red-tailed hawk (*Buteo jamaicensis*), and western burrowing owl (*Athene cunicularia hypugae*).

Common mammal species include the black-tailed hare (*Lepus californicus*), the desert cottontail (*Sylvilagus audubonii*), coyote (*Canis latrans*), badger (*Taxidea taxus*), kit fox (*Vulpes macrotis*) and many species of rodents.

## **BLM Sensitive Wildlife Species:**

BLM sensitive species are species that require special management consideration to avoid potential future listing under the Endangered Species Act (ESA) and that have been identified in accordance with procedures set forth in BLM Manual 6840. The following sensitive species are known to potentially occur within the parcel: western burrowing owl. Western burrowing owl occurs in washes and Mojave Desert scrub uplands in undeveloped parcels. Western burrowing owls are also known to occur in disturbed areas such as undeveloped lots.

## **Migratory Birds:**

Under the Migratory Bird Treaty Act of 1918 (MBTA) and subsequent amendments (16 U.S.C. 703-711), it is unlawful to take, kill, or possess migratory birds. A list of the protected bird species can be found in 50 C.F.R. §10.13. The list of birds protected under this regulation is extensive and the project site has potential to support many of these species, including the BLM sensitive species the western burrowing owl (*Athene cunicularia*). Typically, the breeding season is when these species are most sensitive to disturbance, which generally occurs from March 15 through July 30.

## **Threatened/Endangered T&E Species:**

Threatened and endangered species are placed on a federal list by the U. S. Fish and Wildlife Service (USFWS) and receive protection under the Endangered Species Act of 1973, as amended. The only T&E species known to occur in the vicinity of the project area is the threatened desert tortoise (*Gopherus agassizii*).

In the Mojave region, the desert tortoise occurs primarily on flats and bajadas with soils ranging from sand to sandy-gravel characterized by scattered shrubs and abundant inter-shrub space for herbaceous plant growth. They are also found on rocky terrain and slopes.

This project lies within the Las Vegas Valley programmatic area and is adjacent to undisturbed desert tortoise habitat. Desert tortoise survey data conducted for the preparation of the Disposal

Boundary EIS indicates there are tortoise burrows located within 1 mile of the proposed project site.

## **Environmental Effects:**

### **Wildlife:**

Wildlife species in the general area include small mammals, rodents, birds and reptiles. These species would be displaced as lands are disturbed within the project area. The primary direct impact of the proposed action on wildlife would be killing or maiming of ground dwelling animals during construction and the loss of habitat. Additional impacts associated with the mortality from vehicular traffic may also be realized upon the completion of construction and subsequent use of the project area.

### **BLM Sensitive Wildlife Species:**

Western burrowing owl

The direct impacts of the proposed action on western burrowing owl would be loss of nesting habitat and forage, mortality and harassment of individual animals, and decrease in habitat value of adjacent remaining "wildland" areas due to increased human activity in the area. The species is protected by the Migratory Bird Treaty Act and the proponent will be required to adhere to above mentioned mitigation measures.

### **Migratory Birds**

Migratory birds, including the BLM sensitive species the western burrowing owl (*Athene cunicularia*), may be present on the project site. The proponent will be required to adhere to the following mitigation measures:

- 1) To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th - July 30th.
- 2) If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

### **Threatened/Endangered T&E Species**

This project will disturb a total of 01.73 acres of tortoise habitat. Since tortoise sign has been found in the vicinity and undisturbed habitat exists in the area, there is potential for tortoises to wander into the project area. If not noticed and avoided during construction, desert tortoises could be either injured or killed (by crushing) or harassed (by being moved out of harm's way). Section 7 Consultation for this project is covered under the Las Vegas Valley Biological Opinion (1-5-96-F-23R.3) contingent on compliance with the attached terms and conditions.

The proponent is required to have an authorized biologist on call to relocate any desert tortoises that enter the work area. If tortoises are encountered that must be moved out of harm's way, the biologist will contact the BLM wildlife staff at (702) 515-5000 to identify the relocation site or whether the animal will be transferred to the Clark County Tortoise Pick-up Service.

N-75198/K does not meet the required conditions as stated in term and condition 1.a. as there is no secured habitat to relocate tortoises within two miles of the project site. Therefore, a clearance

survey is voluntary. If a clearance is conducted, any tortoises found must be relocated to the Desert Tortoise Conservation Center following term and condition 1.b. Follow minimization measures in the above biological opinion to reduce potential impacts to desert tortoise.

### **Cumulative Impacts**

All cumulative impacts associated with this action were analyzed on pages 4–58 through 4–66 of the Las Vegas Valley Disposal Boundary Environmental Impact Statement signed March 2005.

## **Tribes, Individuals, Organizations, or Agencies Consulted:**

**Table 1. List of Persons, Agencies and Organizations Consulted**

<b>Name</b>	<b>Purpose &amp; Authorities for Consultation or Coordination</b>	<b>Findings &amp; Conclusions</b>
Pamela Wyatt, Right-of-Way Agent II, Clark County Department of Public Works, Las Vegas, Nevada	Applicant	Prepare a right-of-way offer.

## List of Preparers

**Table 2. List of Preparers:**

<b>Name</b>	<b>Title</b>	<b>Responsible for the Following Section(s) of this Document</b>
Dorothy J. Dickey	Realty Specialist	Introduction, Purpose and Need, Scoping, Preparation and Finalization of EA
Lisa Christianson	Environmental Protection Specialist	Air Quality, Greenhouse Gas Emissions
Katie Kleinick	Natural Resource Specialist	Botanist, Forest Initiative, Healthy (Cactus/Yucca), Threatened, Endangered or Candidate (Plant Species), Vegetation Excluding Listed Species, Woodland Forestry
Susanne Rowe	Archaeologist	Cultural Resources, Native American Religious Concerns, Paleontology
Kathleen Sprowl	Archaeologist	Cultural Resources, Native American Religious Concerns, Paleontology
John Evans	Planning & Environmental Coordinator	Environmental Justice, Socio/Economic
Boris Poff	Hydrologist	Floodplains, Hydrologic Conditions, Riparian/Wetlands, Soils, Water Resources/Quality (Drinking/Surface/Ground), Wetlands/Riparian Zones, Wild & Scenic Rivers
Jessica Stegmeier	Wildlife Biologist	Fish & Wildlife, Migratory Birds, Threatened, Endangered or Candidate (Animal Species)
Krystal Johnson	Wild Horse & Burro	Wild Horse & Burro
George Varhalmi	Geologist	Geology/Mineral Resources/Energy Production,
Mike Moran	En. Protection/Hazmat Specialist	Hazardous Waste
Greg Marfil	Fire Planner	Fuels, Fire Management
Nora Caplette	Natural Resource Specialist	Invasive Species/ Noxious Weeds
Marilyn Peterson	Recreation Specialist	Recreation, Wild and Scenic Rivers
Kirsten Cannon	Public Affairs Specialist	Public Affairs
Lauren Brown	NRS Restoration Ecologist	Visual Resources
Sendi Kalcic	Wilderness Planner	Areas with Wilderness Characteristics

## **- EXHIBIT A— STIPULATIONS**



**Exhibit A**  
**Stipulations for N-75198/K/**

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**1.0 General Stipulations**

- 1.1. The right-of-way is issued subject to all valid existing rights.
- 1.2. No signs of advertising devices shall be placed on the premises or on adjacent public lands, except those posted by or at the direction of the authorized officer.
- 1.3. The right-of-way shall be maintained in a sanitary condition at all times. Waste materials at those sites shall be disposed of promptly at an approved waste disposal site. "Waste", as used in this paragraph, shall mean all discarded matter of any kind.
- 1.4. Holder shall mark the exterior boundaries of the right-of-way with stake and/or lath at 100 to 200 foot intervals. The intervals may be varied at the time of staking at the discretion of the Authorized Officer. The tops of the stakes and/or laths will be painted and the laths flagged in a distinctive color as determined by the Holder. Holder shall maintain all boundary stakes and/or laths in place until final cleanup and restoration is completed.
- 1.5. Holder shall conduct all activities associated with construction, operation, maintenance and termination of this right-of-way within its authorized limits.
- 1.6. Holder shall maintain the right-of-way in a safe, useable condition, as directed by the Authorized Officer. A regular maintenance program shall include, but is not limited to, soil stabilization.
- 1.7. Holder shall maintain copy of the authorization along with stipulations on construction site at all times. In the event that the public land underlying this right-of-way, encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part [2800][2880], including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.
- 1.8. Within 90 days of construction completion, the Holder shall provide the Authorized Officer with data in a format compatible with the Bureau's Arc-Info Geographic Information System to accurately locate and identify the right-of-way:

Acceptable data formats are:

Corrected Global Positioning System files with sub-meter accuracy or better, in UTM NAD 83; Zone 11;  
ARCGIS export files on a CD ROM, shapefile, geodatabase.

Data may be submitted in any of the following formats:

ARCGIS interchange, shapefile or geodatabase format.  
CD ROM in compressed or uncompressed format.

All data shall include metadata for each coverage, and conform to the Content Standards for Digital Geospatial Metadata Federal Geographic Data Committee standards. Contact the GIS Department at (702) 515-5000.

## **2.0 Air Quality**

- 2.1. The Holder shall not violate applicable air standards or related facility siting standards established by or pursuant to applicable federal, state, or local laws or regulations. The Holder shall be responsible for dust abatement within the limits of the right-of-way and is responsible for obtaining all necessary permits from appropriate authorities for acceptable dust abatement and control methods (e.g., water, chemicals). The Holder shall be solely responsible for all violations of any air quality permit, law or regulation, as a result of its action, inaction, use or occupancy of the right-of-way.

Notwithstanding whether a violation of any air quality permit, law or regulation results, the Holder will cooperate with the Authorized Officer in implementing and maintaining reasonable and appropriate dust control methods in conformance with law and appropriate to the circumstances at the sole cost of the Holder.

- 2.2. All construction projects equal to or larger than .25 acres requires a dust control permit obtained through the Clark County Department of Air Quality and Environmental Management (DAQEM). All dust control permit conditions and stipulations must be in compliance for the duration of the project(s).
- 2.3. Prior to relinquishment, abandonment, or termination of this right-of-way, the Holder shall apply reasonable and appropriate dust abatement and control measures to all disturbed areas. The abatement and measures shall be designed to be effective over the long-term (e.g., rock mulch or other means) and acceptable to the Authorized Officer.
- 2.4. During excavation, backfilling, and contouring, the disturbed soil should be wetted sufficiently in order to effectively reduce airborne dust and reduce soil erosion.

## **3.0 Cultural**

- 3.1. Any cultural and/or paleontological resources (historic or prehistoric site or object) discovered by the Holder, or any person working on his behalf on public or Federal lands shall be immediately reported to the Authorized Officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the Authorized Officer. An evaluation of the discovery will be made by the Authorized Officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The Holder will be responsible for the cost of evaluation. Any decision regarding suitable

mitigation measures will be made by the Authorized Officer after consulting with the Holder. Holder shall be responsible for the resultant mitigation costs.

#### 4.0 **Hazardous Material/Pesticides/Liability**

- 4.1. No hazardous material, substance, or hazardous waste, (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, *et seq.*, or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*) shall be used, produced, transported, released, disposed of, or stored within the right-of-way area at any time by the Holder. The Holder shall immediately report any release of hazardous substances (leaks, spills, etc.) caused by the Holder or third parties in excess of the reportable quantity as required by federal, state, or local laws and regulations. A copy of any report required or requested by any federal, state or local government agency as a result of a reportable release or spill of any hazardous substances shall be furnished to the Authorized Officer concurrent with the filing of the reports to the involved federal, state or local government agency.
- 4.2. The Holder shall immediately notify the Authorized Officer of any release of hazardous substances, toxic substances, or hazardous waste on or near the right-of-way potentially affecting the right-of-way of which the Holder is aware.
- 4.3. As required by law, Holder shall have responsibility for and shall take all action(s) necessary to fully remediate and address the hazardous substance(s) on or emanating from the right-of-way.
- 4.4. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the Holder shall obtain from the Authorized Officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers and any other information deemed necessary by the Authorized Officer.

The plan shall be submitted no later than December 1 of any calendar year that covers the proposed activities for the next fiscal year.

Pesticides shall not be permanently stored on public lands authorized for use under this right-of-way.

- 4.5. The Holder shall comply with all applicable local, state, and federal air, water, hazardous substance, solid waste, or other environmental laws and regulations, existing or hereafter enacted or promulgated. To the full extent permissible by law, the Holder agrees to indemnify and hold harmless, within the limits, if any, established by state law (as state law exists on the effective date of the right-of-way), the United States against any liability arising from the Holder's use or occupancy of the right-of-way, regardless of whether the Holder has actually developed or caused development to occur on the right-of-way, from the time of the issuance of this right-of-way to the Holder, and during the term of this right-of-way. This agreement to indemnify and hold harmless the United States against any liability shall apply without regard to whether the liability is caused by the Holder, its agents, contractors, or third parties. If the liability is caused by third parties, the Holder will pursue legal remedies against such third parties as if the Holder were the fee owner of the right-of-way.

Notwithstanding any limits to the Holder's ability to indemnify and hold harmless the United States which may exist under state law, the Holder agrees to bear all responsibility (financial or other) for any and all liability or responsibility of any kind or nature assessed against the United States arising from the Holder's use or occupancy of the right-of way regardless of whether the Holder has actually developed or caused development to occur on the right-of-way from the time of the issuance of this right-of-way to the Holder and during the term of this right-of-way.

- 4.6. Mineral material generated, and not needed for the development of the proposed action within the right-of-way site, requires a specific BLM use authorization in accordance with regulations at 43 CFR 3600 prior to the removal of the excess mineral material.

## **5.0 Survey Monuments**

- 5.1. Holder shall protect all survey monuments found within the authorization area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coast and Geodetic Survey benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. If any of the above are to be disturbed during operations, the holder shall secure the services of a Professional Land Surveyor or Bureau cadastral surveyor to perpetuate the disturbed monuments and references using surveying procedures found in the Manual of Instructions for the Survey of the Public Lands of the United States and Nevada Revised Statutes, Chapter 329, Perpetuation of Corners. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monuments, the holder shall be responsible for the survey cost.

## **6.0 Vegetation/Noxious Weeds/Land surface Treatment/Soil/Water/Riparian**

- 6.1. This project occurs within the designated "low" density zone for cactus and yucca. All cactus and yucca that might be impacted by this action must be disposed of in an off-site trash receptacle.
- 6.2. The Holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The Holder is responsible for consultation with the Authorized Officer and/or local authorities for acceptable weed control methods within limits imposed in the right-of-way stipulations. This proposed action will follow the guidelines of the LVFO Noxious Weed Plan, that was approved on December 18, 2006. The following are project specific stipulations that will attempt to control Nevada listed noxious weeds on this project.

The project proponent shall limit the size of any vegetation and/or ground disturbance to the absolute minimum necessary to perform the activity safely and as designed. The project proponent will avoid creating soil conditions that promote weed germination and establishment.

Locate equipment storage, machine and vehicle parking in areas that are relatively weed-free. The project proponent shall avoid or minimize all types of travel through weed-infested areas.

BLM or the project proponent shall determine equipment-cleaning sites (if equipment is

infested with weed seeds, plant parts or mud and dirt). Project related equipment and machinery (this especially includes the nooks and crannies of undercarriages) will be cleaned using compressed air or water to remove mud, dirt and plant parts before moving into and from relatively weed-free areas. Seeds and plant parts will be collected, bagged and deposited in dumpsters destined for local landfills.

Project workers shall inspect, remove, and dispose of weed seed and plant parts found on their clothing and personal equipment, bag the product and dispose of in a dumpster for deposit in local landfills.

- 6.3. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and contoured evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.
- 6.4. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction will be salvaged and transplanted out of harm's way but still within the right of way. At the conclusion, including trench backfilling and compaction, replace the stockpiled soil with plant debris uniformly back on the surface of the disturbed area.
- 6.5. Soil/Water/Riparian: If work is to occur in Ephemeral channels, need to consult with Army Corp of Engineers (ACOE) and Nevada Department of Environmental Protection (NDEP). If drilling boreholes, holder needs to follow Nevada Administrative Code (NAC) protocols for drilling. Consult with ACOE to make sure you do not need a 404 permit.

## **7.0 Migratory Birds**

- 7.1. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th - July 30th.

If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

## **8.0 Threatened and Endangered Species**

- 8.1. The holder shall abide by the terms and conditions of Biological Opinion File No. 1-5-96-F-023R.3 for the Las Vegas Valley, on file at the Bureau of Land Management Office, Las Vegas, Nevada, and as shown below.

### **Terms and Conditions of Biological Opinion 1-5-96-F-23R.3**

In order to be exempt from the prohibitions of section 9 of the Endangered Species Act, BLM must comply with the following terms and conditions, which implement the reasonable and prudent measures. These terms and conditions are non-discretionary.

1. To implement Reasonable and Prudent Measure Number 1, BLM shall fully implement the following measures to minimize take of desert tortoises due to activities associated with construction or development activities:

- a. Applicants or project proponents will search for and remove tortoises from project areas within the programmatic area if (1) survey data indicate that tortoises are present based on observation of live tortoises, recent sign, or active burrows, (2) tortoises may be relocated to secure habitat within 2 miles from the point of capture and barriers will exist to prevent tortoises from re-entering project areas and appear in harm's way, and (3) the tortoises appear to be healthy, unless the Service determines that survey and removal will not contribute toward recovery.

**N-75198/K/ does not meet the required conditions as stated in term and condition 1.a. as there is no secured habitat within two miles of the project site to relocate tortoises. Therefore, a clearance survey is voluntary. If a clearance is conducted, any tortoises found must be relocated to the Desert Tortoise Conservation Center following term and condition 1.b.**

Applicants or project proponents shall contract an authorized desert tortoise biologist to conduct the clearance and removal. Only individuals trained to handle desert tortoises in accordance with Service-approved guidelines shall be authorized to handle desert tortoises, unless they are in imminent danger. Currently, the Service-approved handling guidelines are described in Guidelines for Handling Desert Tortoises during Construction Projects (Desert Tortoise Council 1994, revised 1999). Tortoises shall not be placed on private lands or lands under management by an agency other than BLM, without written permission of the landowner or agency. If unforeseen circumstances occur that would question the survival of tortoises potentially relocated from project areas, BLM shall coordinate with the Service on the disposition of such tortoises.

- b. If a tortoise is in imminent danger with immediate death or injury likely (such as from an approaching vehicle or equipment), and the tortoise has been given the opportunity to move but has withdrawn in its shell and is not moving, onsite personnel may capture the tortoise and place it in a clean unused cardboard box or similar container. If tortoises are found that cannot be relocated as described in Term and Condition 1.a., Clark County's tortoise pick-up service will be notified immediately. The contained tortoise will be held in the shade or a temperature-controlled environment until removed by the pick-up service.
2. To implement Reasonable and Prudent Measure Number 2, BLM shall fully implement the following measures minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation:
    - a. BLM shall ensure that a fee is paid at the current rate of \$786 per acre of disturbance, as indexed for inflation, prior to surface disturbance with the following exceptions:

- (1) R&PP leases would be issued prior to payment of remuneration fees. Payment of fees on R&PP leases shall be deferred until immediately prior to surface disturbance. If the R&PP project consists of phased development of the lease area, fees shall be paid for each phase immediately prior to surface disturbance. Likewise, road ROW issued to local governments (e.g., Clark County, cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City) may be issued before payment of fees. If payment of remuneration fees is postponed for any project, the applicant must submit a request for a Notice to Proceed before surface disturbance. The applicant shall provide BLM with proof of payment of the required remuneration fees, before BLM issues the Notice to Proceed. Both of these actions shall occur prior to surface disturbance. A Notice to Proceed shall be issued for each segment of right-of-way as payment is made.
- (2) Because many mining plans of operation are phased in over a number of years, remuneration fees shall be paid for each phase immediately prior to surface disturbance.
- (3) Projects impacting less than 0.25 acres will not be assessed a remuneration fee.
- (4) Mineral material sales will be charged a fee of 25 cents per yard up to the equivalent of \$774 per acre of disturbance.

The fee rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31<sup>st</sup> of each year. The next adjustment shall occur on January 31, 2012, and will become effective March 1, 2012. Fees assessed or collected for projects covered under this biological opinion after March 1<sup>st</sup> of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at:

<http://stats.bls.gov/news.release/cpi.nr0.htm>

***The surface disturbance for this project is 1.73 acres. The total fee for this project is \$1,359.78 (\$786.00 x 1.73).***

This fee will be paid directly to the Bureau of Land Management, Information Access Center. These funds are independent of any other fees collected by the Bureau of Land Management for desert tortoise conservation planning.

The payment shall be accompanied by the **Section 7 Fee Payment Form**, (Attachment) and completed by the payee. Payment shall be by certified check or money order payable to Bureau of Land Management. Checks may be delivered in person at the BLM Information Access Center (IAC). For private parcel services, such as Fed-Ex or UPS, use the physical address. For US Postal Service, use the PO Box. Note that the zip codes are different for physical vs. PO Box.

Physical Address: Bureau of Land Management  
Attn: Information Access Ctr  
1340 Financial Blvd.  
Reno, NV 89502

PO Box:

Bureau of Land Management  
Attn: Information Access Ctr  
PO Box 1200  
Reno, NV 89520-0006

- b. The boundaries of project areas shall be flagged or marked and all equipment, vehicles, and construction materials will remain within the project site or authorized areas. Staging areas will be located in previously disturbed areas whenever possible. Cross-country travel and travel outside authorized areas will be prohibited.
3. To implement Reasonable and Prudent Measure Number 3, BLM shall fully implement the following measure to minimize injury or mortality of desert tortoises during handling and/or removal from BLM lands within the action area:
- a. In accordance with Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise (Service 1992), an authorized desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign. As a guideline, an authorized biologist should have 60 field days of experience. In addition, the biologist shall have the ability to recognize and accurately record survey results.
  - b. All burrows found during clearance surveys within areas proposed for disturbance, whether occupied or vacant, will be excavated by an authorized desert tortoise biologist and collapsed or blocked to prevent desert tortoise reentry. All burrows will be excavated with hand tools to allow removal of desert tortoises or desert tortoise eggs. All desert tortoise handling and excavations, including nests, will be conducted by an authorized desert tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999).
  - c. All located desert tortoises and desert tortoise eggs will be relocated offsite 300 feet to 2 miles into adjacent undisturbed habitat. Tortoises found aboveground will be placed under a bush in the shade. A tortoise located in a burrow will be placed in an existing unoccupied burrow of the same size and orientation as the one from which it was taken. If a suitable natural burrow is unavailable or the occupancy status of the burrow is in question, an authorized desert tortoise biologist will construct one of the same size and orientation as the one from which it was removed using the protocol for burrow construction in Section B-5-f (Desert Tortoise Council 1994, revised 1999).
  - d. Any tortoise found within one hour before nightfall will be placed in a separate clean cardboard box and held in a cool, predator-free location. The box will be covered and kept upright at all times to minimize stress to the tortoise. Each box will be used once and then disposed of properly. The tortoise will be released the next day in the same area from which it was collected and using the procedures described above. Each tortoise will be handled with new disposable latex gloves. After use, the gloves will be properly discarded and a fresh set used for each subsequent tortoise handling.



- e. Desert tortoises shall be treated in a manner to ensure that they do not overheat, exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises shall be kept shaded at all times until it is safe to release them. No desert tortoise shall be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F (35°C). Ambient air temperature shall be measured in the shade, protected from wind, at a height of 2 inches (5 centimeters) above the ground surface. No desert tortoise shall be captured if the ambient air temperature is anticipated to exceed 95°F (35°C) before handling and relocation can be completed. If the ambient air temperature exceeds 95°F (35°C) during handling or processing, desert tortoises shall be kept shaded in an environment that does not exceed 95°F (35°C), and the animals shall not be released until ambient air temperature declines to below 95°F (35°C).
  - f. Project activities that may endanger a tortoise will cease if a tortoise is found on a project site. Project activities will resume after an authorized desert tortoise biologist removes the tortoise from danger or after the tortoise has moved to a safe area on its own volition.
  - g. A desert tortoise education program may be required on an action-specific basis if BLM biologist or Service believe that project personnel will encounter desert tortoises. The program would be presented to all personnel onsite during construction activities. This program would contain information concerning the biology and distribution of the desert tortoise, desert tortoise activity patterns, its legal status and occurrence in the proposed project area, the definition of "take" and associated penalties, measures designed to minimize the effects of construction activities, the means by which employees can facilitate this process, and reporting requirements to be implemented when tortoises are encountered.
4. To implement Reasonable and Prudent Measure Number 4, BLM shall fully implement the following measures to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and reinitiation requirements contained in this biological opinion:

***All necessary information sheets and forms shall be completed by the proponent. Attachment A must be completed prior to BLM authorizing the action. The proponent must complete Attachment B and return it to the BLM within 30 days of completion of construction. These forms will be modified as necessary with the Service's concurrence.***

## Attachment A

**SECTION 7 LAND DISTURBANCE FEE PAYMENT FORM****Biological Opinion File Number:** 1-5-96-F-23R.3**Biological Opinion Issued By:** Nevada Fish and Wildlife Office, Reno, Nevada**Species:** Desert Tortoise (*Gopherus agassizii*) (Mojave population)**Project Name:** Right-of-Way for Road and Drainage with Related Appurtenances**Case File/Serial #:** N-75198/K/ Amendment**Project Proponent:** Clark County Department of Public Works**Phone Number:** \_\_\_\_\_**Payment  
Calculations:**

	Clark County		County		County	
	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat	Critical habitat	Non-critical habitat
# acres anticipated to be disturbed on federal land		1.73				
Fee rate (per acre)		786				
Total cost/habitat type (per county)	\$ -	\$1,359.78	\$ -	\$ -	\$ -	\$ -
Total cost per county	\$ 1,359.78		\$ -		\$ -	

**Total payment required (all counties): \$1,359.78****Amount paid:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Check/Money Order #:** \_\_\_\_\_**Authorizing agencies:** Bureau of Land Management, \_\_\_\_\_ Las Vegas, \_\_\_\_\_ Nevada**Make check payable to:** Bureau of Land Management**Deliver check to:****Physical Address**Bureau of Land Management  
Attn: Information Access Ctr  
1340 Financial Blvd.  
Reno, NV 89502**PO Box**Bureau of Land Management  
Attn: Information Access Ctr  
PO Box 12000  
Reno, NV 89520-0006**Credit Card Payments:** Contact BLM State Office Public room at 775-861-6500

For BLM Public Room

**Process check to:**

Contributed Funds-All Other

WBS: LVTFX000800

7122 FLPMA

All other Res. Dev. Project and Management

Remarks: LLNV934000 L71220000.JP0000 LVTFX000800 Desert  
Tortoise Conservation ProgramPlease provide a copy of this completed  
payment form and the payment receipt to NV-  
930, Attn: T&E Program Lead**\*\*T&E Program Lead will provide a copy to the  
appropriate District Office(s)**

**Attachment B**

**DESERT TORTOISE SECTION 7 COMPLIANCE FORM**

**Entire form is to be completed by the project proponent and delivered to the Bureau of Land Management within 30 days of project completion**

Biological Opinion File Number: 1-5-96-F-023.R3

Species: desert tortoise (*Gopherus agassizii*)

Project Name: Right-of-way for Road and Drainage with Related Appurtenances  
Case File No: N-75198/K/Amendment  
Acreage of Disturbance Authorized: 1.73  
Acreage Actually Disturbed: \_\_\_\_\_  
Fees Assessed: \$1,359.78 Rate: \$786 per acre

In accordance with this biological opinion, applicants or project proponents may voluntarily choose to search for and remove tortoises from lands to be disturbed within the project area.

☐ Desert tortoise survey conducted Date(s): \_\_\_\_\_

☐ Voluntary desert tortoise survey conducted

☐ No desert tortoise survey conducted

\_\_\_\_\_  
☐ Migratory bird survey conducted Date(s): \_\_\_\_\_

\_\_\_\_\_  
Number of desert tortoises injured: \_\_\_\_\_  
Number of desert tortoises killed: \_\_\_\_\_  
Number of desert tortoises removed from the project site: \_\_\_\_\_  
Number relocated to adjacent habitat within 2 miles: \_\_\_\_\_  
Number transferred to the Clark County Tortoise Pick-up Service: \_\_\_\_\_

*(Provide a report detailing all tortoise encounters and what happened to the animals. This report will include age class, gender, and health of each animal, maps showing where each tortoise was captured and later relocated, and the air temperature during the relocation.)*

Company and persons who conducted the survey and removal<sup>1</sup>:

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Address : \_\_\_\_\_

Phone: \_\_\_\_\_

State Permit #: \_\_\_\_\_

Deliver this completed form to: Bureau of Land Management  
Division of Renewable Resources  
4701 N. Torrey Pines Drive  
Las Vegas, NV 89130  
(702) 515-5000

If you have questions, call the BLM's Wildlife staff at (702) 515-5000.

*Revised 07/13/2005*

<sup>1</sup> BLM approval of biological monitors/surveyors required. Submit resumes for review/approval at least 15 days prior to construction.

**- EXHIBIT B — AERIAL MAP**





**OpenDoor**

**JUNE 6, 2**

Submit Quick Search

(Parent) : 42865 Ssaipm

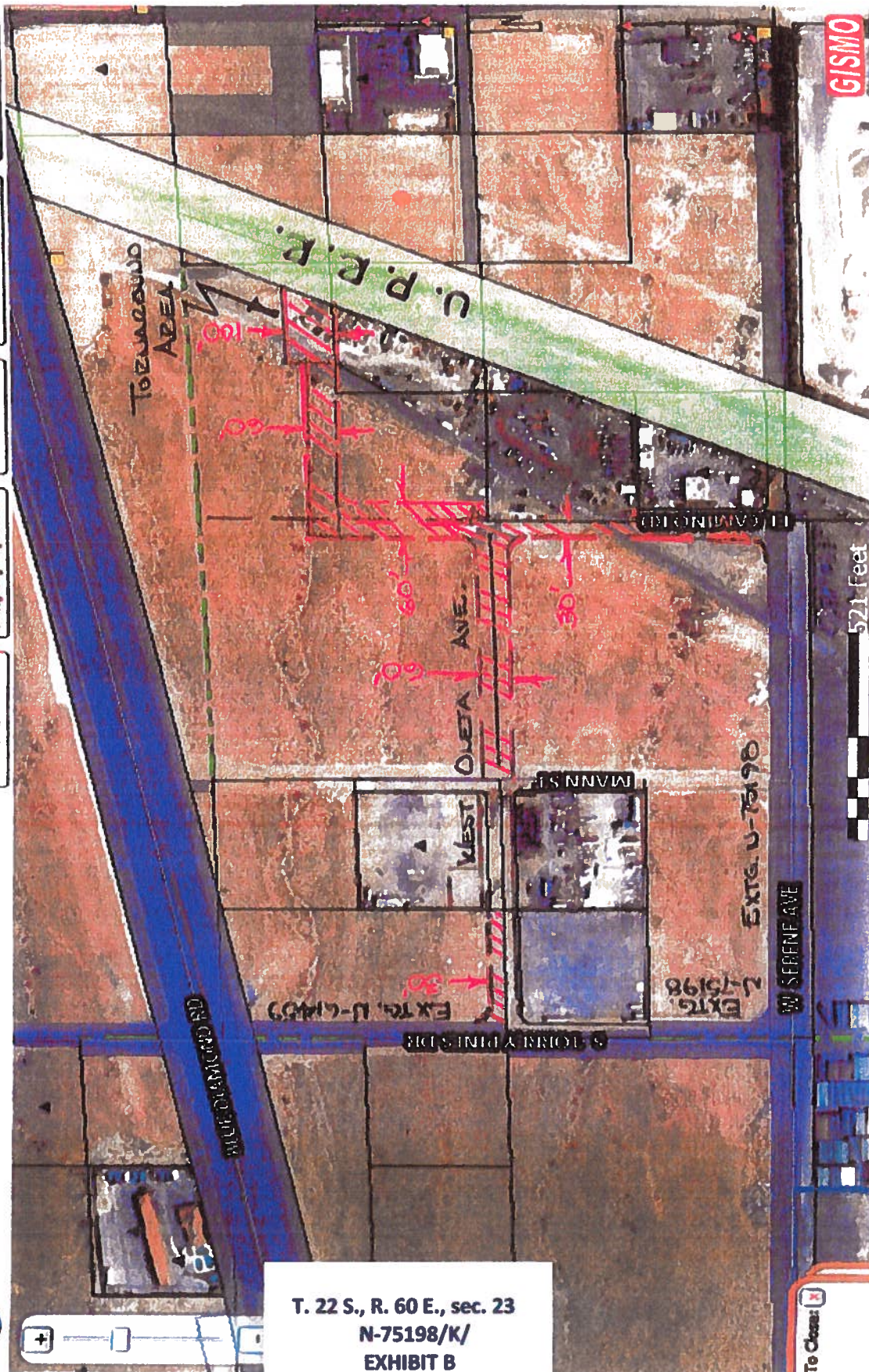
**Search**

### Display Options

## Tools

### Points of Interest

## Resources



**T. 22 S., R. 60 E., sec. 23**  
**N-75198/K/**  
**EXHIBIT B**  
**1 of 1**

**- EXHIBIT C — MASTER TITLE PLAT (MTP) MAP**



